IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

MONDAY, THE 25TH JUNE 2007 / 4TH ASHADHA 1929

WP(C).No. 12514 of 2004(M)

AGAINST THE ORDER IN IA.3538/03 IN OS.397/2000 of PRINCIPAL SUB COURT,ERNAKULAM

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PETITIONER:

M/S. VETREX SECURITIES LTD, THOTATHIL TOWERS, 2ND FLOOR, MARKET ROAD, ERNAKULAM - 682 014 REPRESENTED BY ITS SENIOR EXECUTIVE SRI.K.J.THOMAS.

BY ADV. SRI.C.K.KARUNAKARAN
SRI.C.E.UNNIKRISHNAN

RESPONDENTS:

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1. SMT.ANU MATTO, W/O.MATTO THOMAS, RESIDING AT 36/304, THOMAS TOWERS, LISSY HOSPITAL ROAD, NEAR PULLEPPADY RAILWAY CROSSING, ERNAKULAM VILLAGE, KANAYANNUR TALUK.

2. MATTO THOMS, S/O.P.M.THOMAS, RESIDING AT 36/304, THOMAS TOWERS, LISSY HOSPITAL ROAD, NEAR PULLEPPADY RAILWAY CROSSING, ERNAKULAM VILLAGE, KANAYANNUR TALUK.

BY ADV. SRI.P.N.RAMAKRISHNAN NAIR for R1 & R2
SRI.P.VISWANATHAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 25/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC.NO.12514/2004 M

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: **COPY OF THE PLAINT DTD. 27/06/2000 FILED BY THE PETITIONER BEFORE THE SUBORDINATE JUDGE'S COURT AT ERNAKULAM.**

EXT.P2: **COPY OF I.A.NO.4266 OF 2002 IN O.S.NO.397/2000 DTD. 22/10/02.**

EXT.P3: **COPY OF I.A.NO.4267/02 IN O.S.NO.397 OF 2000 DTD. 22/10/02.**

EXT.P4: **COPY OF I.A.NO.4268/2002 IN O.S.NO.397 OF 2000 DTD.22/10/02.**

EXT.P5: **COPY OF I.A.NO.4887/02 IN O.S.NO.397 OF 2000 DTD. 21/11/02.**

EXT.P6: **COPY OF I.A.NO.3538/2003 FILED UNDER SECTION 8 OF THE ARBITRATION AND CONCILIATION DT.D. 11/08/03.**

EXT.P7: **COPY OF COUNTER AFFIDAVIT DTD. 06/12/2003 TO I.A.NO.3538/2003.**

EXT.P8: **COPY OF ORDER IN I.A.NO.3538/2003 IN O.S.NO.397/2000 OF THE PRINCIPAL SUBORDINATE JUDGE'S COURT AT ERNAKULAM DTD. 19/01/2004.**

/TRUE COPY/

KSS

PIUS C. KURIAKOSE,J.

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W.P.(C) No.12514 of 2004

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Dated: 25th June, 2007

JUDGMENT

Ext.P8 order passed by the learned Subordinate Judge on an application submitted by the defendant under Section 8 of the Arbitration and Conciliation Act for closing the suit and for referring the parties to arbitration is under challenger.

2. Mr.C.E.Unnikrishnan, learned counsel for the petitioner has addressed me very strenuously on the various grounds raised in the Writ Petition particularly ground No.6. Mr.P.Viswanathan, learned counsel for the respondents would resist the submissions of Mr.Unnikrishnan.

3. I have considered the rival submissions. I have gone through the impugned order and various other materials which have been placed along with the Writ Petition. I am of the view that when the impugned order is gauged by the parameters which are applied when this court exercises its visitorial jurisdiction under Article 227 of the Constitution, there is no warrant for interfering with Ext.P8. I find that the learned Subordinate Judge has kept in his mind the relevant statutory provisions and also binding judicial precedents including that the Supreme Court in **P.Anand Gajapathi Raju v.**

P.V.G.Raju (JT 2000(4) SC 594). The learned Subordinate Judge found that the essential conditions which are pre-requisites for referring the parties for arbitration, namely, the existence of an arbitration agreement, the institution of suit one of the parties, the identity of the subject matter of the suit and the subject matter of the proposed arbitration agreement and that finally the other party in the suit requesting to refer for arbitration before he has filed his first statement on the substance of the dispute. Mr.Unnikrishnan would submit that the first statement which was filed by the petitioner was an affidavit in support of an application to set aside an ex parte order and in that affidavit there was no request at all for referring the dispute to arbitration and therefore, according to the learned counsel, I.A.No.3538/03 which was filed only subsequently should not have been entertained. I am not in agreement with the above argument. The affidavit in support of the application to set aside the ex parte order cannot be construed as a statement submitted by the petitioner touching the substance of the matter. In that I.A. the court was concerned only as to whether there was sufficient cause for the petitioner for not appearing on the day the suit was posted. The argument of the learned counsel based on ground No.6 in the

Memorandum of Writ Petition is that by virtue of bye-laws, the rules and the regulations of the National Stock Exchange, all claims, differences or disputes between the parties have to be submitted before the Arbitrator within six months of the day on which the claims, differences or disputes arise and on account of the non-filing of the claims, disputes or differences within the aforementioned period of six months, the arbitration clause had become operative. This aspect of the matter, it appears, was not brought to the notice of the learned Subordinate Judge. Whatever that be, since Ext.P8 does not suffer from any infirmity warranting correction under Article 227 of the Constitution, I confirm the same observing that it will be open to the petitioner to raise the contentions raised through ground No.6 before the Arbitrator. In other words, the contentions raised in Ground No.6 (the arbitrability of the claim) also will be looked into by the Arbitrator. Subject to the above observation, the Writ Petition will stand dismissed. No costs.

srd **PIUS C.KURIAKOSE, JUDGE**